

No. 09-1576

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIRST DIVISION  
DATE: Jan. 24, 2011

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 11549
	)	
SHAWN WILLIAMS,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge Presiding.

---

PRESIDING JUSTICE HALL delivered the judgment of the court.  
Justices HOFFMAN and LAMPKIN concurred in the judgment.

---

**O R D E R**

*HELD:* Circuit court's decision not to recharacterize defendant's *pro se* motion for reduction of sentence as a post-conviction petition may not be reviewed for error; mittimus amended to reflect an additional two days of pre-sentence custody credit which does not include the day of sentencing in its calculation; and order dismissing defendant's motion affirmed.

Defendant Shawn Williams appeals from an order of the circuit court of Cook County dismissing his *pro se* motion for

reduction of sentence. He contends that the circuit court abused its discretion in failing to recharacterize his *pro se* motion as a petition for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2006)). He also contends that he is entitled to an additional three days of pre-sentence custody credit.

On September 14, 2007, defendant entered a negotiated plea of guilty to aggravated battery with a firearm, and was sentenced to 18 years' imprisonment. The mittimus issued that same day.

Defendant did not attempt to vacate his plea or perfect an appeal of the judgment entered thereon, but on May 18, 2009, filed a *pro se* motion "for reduction of sentence" alleging that the State forced him to plead guilty to a crime he never committed. Defendant also alleged that the State had no real evidence against him.

On May 29, 2009, the circuit court denied defendant's motion. In doing so, the court noted that defendant's motion is titled "for reduction of sentence," but that it is more akin to a motion to withdraw a plea of guilty where he alleges that the State did not have any real evidence and forced him to plead guilty. The court also noted that in either event the motion was untimely filed.

On appeal, defendant first contends that the circuit court erred in failing to recharacterize his *pro se* motion as a post-

conviction petition. He requests that this court reverse the dismissal of his motion and remand this cause for recharacterization and first-stage post-conviction proceedings.

Pursuant to section 122-1(d) of the Act, a petition which does not specify in its body or title that it is filed under the Act, need not be evaluated to determine whether it could otherwise have stated some grounds for relief under the Act. 725 ILCS 5/122-1(d) (West 2006). In *People v. Shellstrom*, 216 Ill. 2d 45, 53 n.1 (2005), our supreme court addressed this section in finding that the circuit court has authority to recharacterize a pleading as a post-conviction petition, but that it is under no obligation to do so. The supreme court recently revisited this issue and explicitly held that in light of *Shellstrom* and section 122-1(d) of the Act, the circuit court's decision not to recharacterize a defendant's *pro se* petition as a post-conviction petition may not be reviewed for error. *People v. Stoffel*, No. 108500, slip op. at 9 (Ill. Dec. 23, 2010). Applying that ruling to the circumstances of this case, we may not review for error the circuit court's decision not to recharacterize defendant's *pro se* motion for reduction of sentence as a post-conviction petition.

Defendant also claims that he is entitled to an additional three days of pre-sentence custody credit. The State responds

that he is only entitled to an additional two days of credit because the day of sentencing is not included in the calculation.

In *People v. Williams*, 394 Ill. App. 3d 480, 481-83 (2009), appeal allowed No. 109361, this court found little concrete legal foundation for the split of authority regarding whether a defendant should receive credit for the day he is sentenced, but that the concern over double credit was persuasive. Accordingly, this court held that defendant is not entitled to credit for the day of sentencing if the mittimus is issued effective that same day. *Williams*, 394 Ill. App. 3d at 483.

In *People v. Jones*, 397 Ill. App. 3d 651, 656 (2009), the court followed the precedent set in *Williams*, and found that defendant was not entitled to pre-sentence credit for the day of sentencing. Accord *People v. Willis*, 402 Ill. App. 3d 47, 60-61 (2010). We find no reason to depart with these rulings, and therefore find that defendant is not entitled to credit for the day of sentencing since his mittimus issued on the same day. Based on the period of time he spent in pre-sentence custody, however, we find that he is entitled to an additional two days of credit. We therefore order that the mittimus be amended to reflect a credit of 498 days of pre-sentence custody credit. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

In light of the foregoing, we affirm the order of the circuit court of Cook County, and amend the mittimus.

1-09-1576

Affirmed; mittimus amended.